



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Minutes of the January 14, 2004 meeting of the  
Commission on Governmental Ethics and Election Practices  
held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Andrew Ketterer; Hon. James O. Donnelly; Hon. David N. Ott. Staff:  
Executive Director Jonathan Wayne; Counsel Phyllis Gardiner; PAC Registrar  
Diana True; Candidate Registrar Andrew Helman; Administrative Assistant  
Kendra Danforth.

At 10:03 a.m., Chair Ketterer convened the meeting. The Commission considered the  
following items:

Agenda #8 – Question from Representative David Lemoine

Representative David Lemoine asked the Commission whether he could use surplus funds  
from his 2002 legislative race for a campaign for State Treasurer. The State Treasurer is a  
constitutional officer selected by the Legislature. Because the Election Law prohibits  
constitutional officers from being associated with political action committees, Rep.

Lemoine also asked whether there were limitations on the fundraising he could conduct for  
his campaign. Commission counsel Phyllis Gardiner noted that an individual running for  
State Treasurer does not fall within the definition of "candidate" in the Election Law.  
Chair Ketterer stated that because Rep. Lemoine would not be a candidate within the  
statutory definition, the surplus funds could not be used for Rep. Lemoine's campaign for  
treasurer, but that the Representative could use the funds as contributions to other  
candidates or to political party committees.

Mr. Ketterer stated that Rep. Lemoine could form a committee for the purpose of raising  
money to cover his own campaign expenses such as travel, meals, and lodging, provided  
that the committee did not make political contributions to other candidates which would  
qualify the committee as a PAC. The funds received by the committee could not be  
deposited into a law firm or personal checking account.

Mr. Donnelly asked why forming a committee to raise and spend funds to advance Rep.  
Lemoine for the office of treasurer would not make the committee a PAC. Chair Ketterer  
responded that a person seeking the office of State Treasurer is not a candidate. Mr.  
Donnelly cautioned Rep. Lemoine to consider the perception of improper influence by  
contributors to a campaign for State Treasurer. Chair Ketterer noted that there may be

political reasons for Rep. Lemoine to choose not to solicit contributions, but it did not appear to be prohibited by law.

Agenda Item #1 – Ratification of minutes of November 6, 2003 meeting

Mr. Donnelly moved, Mr. Ott seconded, and the members voted unanimously to adopt the draft minutes of the November 6, 2003 meeting.

Agenda Item #2 – Workers’ Compensation Trusts

Bruce Gerrity, Esq. appeared on behalf of a variety of workers’ compensation trusts. In 2002, some trusts had surplus funds that were used for political contributions. The Legislature passed a law in 2003 prohibiting money deposited into a workers’ compensation trust from being used for political contributions. Mr. Gerrity asked about the circumstance in which trust members gave money (in addition to the workers’ compensation premiums) that would be deposited into a separate bank account and then used as political contributions to PACs. Mr. Gerrity asked whether the trust in that circumstance would be considered a PAC under the “funding and transfer mechanism” definition.

The Commission director expressed his concern that if the PACs report the trusts as the contributors of the funds -- rather than the member-businesses -- the original sources of the funds would not be disclosed, which is one of the purposes of the PAC law. He said it was within the Commission’s discretion to interpret the trust as a PAC in order to achieve the disclosure purposes of the law.

Doug Clopp questioned whether it was appropriate for funds deposited into trusts established to cover the claims of injured workers to be used for political contributions. Mr. Gerrity responded that once the claims of workers are paid, surplus funds can be used in the discretion of the trusts, and that the trusts have come to the Commission for guidance on how to comply fully with the laws of the State of Maine. The Commission members stated that in the circumstance proposed by Mr. Gerrity, the trusts would qualify as PACs and would be required to file reports with the Commission.

Agenda Item #5 – Amendments to Commission Rules

Prior to the meeting, the Commission members received copies of all comments received regarding the proposed rule amendments. The Commission members expressed their interest in adopting the routine technical rule amendments, and tabling consideration of the major substantive rule amendments until the February 11 meeting. Commission Counsel Phyllis Gardiner suggested small changes in Chapter 1, Section 2(6). Mr. Donnelly moved, Mr. Ott seconded, and the members voted unanimously to adopt the routine technical rule amendments with the insertions recommended by Ms. Gardiner.

Agenda Item #3 – Penalty Determination: Lisa Carter

Lisa Carter filed her monthly lobbyist report one day late on November 18, 2003. The Commission members considered a letter from Ms. Carter requesting a reduction of the statutory penalty of \$100. The staff recommended a penalty of \$50, which reflected a 50% reduction because Ms. Carter had not previously been late in filing a monthly report. Mr.

Donnelly moved, Mr. Ott seconded, and the members voted unanimously to adopt the staff recommendation of a \$50 penalty.

Agenda Item #4 – Penalty Determination: Christine G. Crocker

Christine G. Crocker filed her annual lobbyist report one day late on January 5, 2004. The Commission members considered a letter from Ms. Crocker requesting a reduction of the statutory penalty of \$200. The staff recommended that the Commission assess the statutory penalty. Mr. Ott moved, Mr. Donnelly seconded, and the members voted unanimously to adopt the staff recommendation of a \$200 penalty.

Agenda Item #6 – Filing 48-Hour Reports on the Last Weekend Before the Election

The Commission members debated the value to Maine Clean Election Act (MCEA) candidates of requiring PACs, candidates, and others to file campaign finance reports on the weekend before an election. The weekend filing would allow the Commission staff to consider whether the reported expenditures triggered matching funds payments to MCEA candidates.

Doug Clopp of the Maine Citizens for Clean Elections stated that weekend filing could permit MCEA candidates to purchase radio advertising on the weekend, or purchase newspaper advertising on the Monday before the election. Abigail Holman expressed doubts that matching funds could be put to use on the weekend before the election.

Mr. Donnelly pointed out that if, due to budget considerations, the Commission has not previously advanced matching funds to a candidate, the candidate may not have access to the funds until the day of the election or the previous day. The Commission members expressed their support for a statutory change to require filing of campaign finance reports on the weekend before an election, as long as the proposal does not create an expectation that all MCEA candidates will receive matching funds on the weekend.

Agenda Item #7 – Carry-Over Bills from Previous Session

The Commission members considered two carry-over bills from the First Session of the 121<sup>st</sup> Legislature. L.D. 1027 would require the filing of transcripts of automated telephone calls with the Commission and the filing of campaign literature that is sent to voters within two weeks of an election. L.D. 1339, among other things, requires PAC's and candidates to report payments made by their contractors and consultants. The Commission members voiced their support for the bills but underscored that their support of L.D. 1027 did not indicate an interest in judging the ethics of advertising and automated telephone messages filed with the Commission.

Agenda Item #9 – Expiration of Terms of Commission Members

The terms of Commission members Andrew Ketterer and David Ott will expire on April 16, 2004. A letter was sent to the Governor's office notifying the Governor of the expiration of these terms.

Agenda Item #10 – Use of Surplus Funds

Under the Election Law, candidates may spend surplus funds from previous elections on nine categories of expenditures. The Commission director showed the members examples of expenditures in recently filed reports that did not appear to fall within the acceptable categories (*e.g.*, purchases of equipment from Sam's Club, VISA payments, tuition expenses). The Commission members requested that the staff send those candidates flyers reminding them of the permitted uses of surplus funds and requesting explanations for the apparently non-compliant expenditures.

There being no further business, the Commission adjourned.

Dated: February \_\_, 2004

Respectfully submitted,

Jonathan Wayne  
Executive Director